

APPEAL NO. 041210
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 22, 2004. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th quarter and that the appellant (self-insured) waived the right to contest the claimant's entitlement to SIBs for the 11th quarter, by failing to timely request a benefit review conference (BRC). The self-insured appealed, disputing the waiver determination. The appeal file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The hearing officer did not err in determining that the self-insured waived its right to contest claimant's entitlement to SIBs for the 11th quarter by failing to timely request a BRC. The self-insured contends on appeal that it complied with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(d) (Rule 130.108(d)), which requires a carrier to request a BRC within 10 days after it received the Application for [SIBs] (TWCC-52), if it had paid SIBs for the previous quarter. It is undisputed that the TWCC-52 initially sent to the claimant identified the wrong quarter and contained the wrong dates. The hearing officer specifically found that the carrier received the TWCC-52 for the 11th quarter on October 7, 2003, and that the carrier requested a BRC on November 18, 2003. The evidence reflects that the initial TWCC-52, which contained the incorrect dates and identified the wrong quarter, was received by the self-insured on October 7, 2003. The hearing officer noted that it was clear that all parties knew what quarter they were dealing with, regardless of the number assigned to it. The corrected TWCC-52 was signed and dated by the claimant on October 19, 2003, and although the day of the month the corrected TWCC-52 was received is difficult to read, it is clear that the TWCC-52 was received by the self-insured in October.

The self-insured contends that the Dispute Resolution Information System (DRIS) notes establish that it timely requested a BRC. We disagree. There is evidence to support the hearing officer's determination that the self-insured did not request a BRC until November 18, 2003. A DRIS entry in evidence dated November 18, 2003, states that there was no confirmation that the Request for [BRC] (TWCC-45) was filed prior to that date. There is sufficient information to support the hearing officer's determination that the carrier waived the right to contest the claimant's entitlement to SIBs for the 11th quarter, by failing to timely request a BRC.

The hearing officer found that the claimant had some ability to work, did not look for work commensurate with her ability to work every week of the qualifying period and did not document her job search efforts, and concluded that the claimant is not entitled

to SIBs for the 11th quarter. These determinations were not appealed. Since the determination that the carrier has waived the right to contest entitlement to SIBs for the 11th quarter by failing to timely request a BRC was affirmed, whether or not the claimant is entitled to SIBs for the disputed issue on the merits is a moot point. Therefore, to avoid the potential that this decision may be misconstrued, we reform Conclusion of Law No. 4 and the decision to reflect that because the self-insured waived the right to contest the claimant's entitlement to SIBs for the 11th quarter, by failing to timely request a BRC, the claimant is entitled to SIBs for the 11th quarter as a matter of law.

We affirm the decision and order as reformed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DP
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Veronica L. Ruberto
Appeals Judge